

12-14-06

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:	:	Chapter 13
	:	
PHILLIP LYNNE DAVIS and JACKIE	:	Case No. 06-40692
ANNE DAVIS,	:	
	:	Judge Bonapfel
Debtors.	:	
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CITIZENS AUTO FINANCE, INC.,	:	
	:	
Objector,	:	
	:	
vs.	:	
	:	
PHILLIP LYNNE DAVIS and JACKIE	:	
ANNE DAVIS,	:	
	:	
Respondents.	:	
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ORDER DENYING CONFIRMATION OF PLAN

Citizens Auto Finance, Inc. (the "Creditor") objects to confirmation of the Debtors' chapter 13 plan that proposes to satisfy the Creditor's claim in full by surrender of a car in which the Creditor holds a purchase money security interest incurred within the 910 day period preceding the filing of the case. The so-called "hanging paragraph" following 11 U.S.C. § 1325(a)(9), added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), eliminates bifurcation under 11 U.S.C. § 506 of the Creditor's claim into secured and unsecured portions based on the value of its collateral for purposes of § 1325(a)(5). The Debtors contend that, because the new provision thus requires that the claim secured by the car

be allowed as a secured claim in its full amount, without regard to the car's value, the surrender of the collateral under the plan in accordance with § 1325(a)(5)(C) results in full satisfaction of the claim. The Creditor argues that the new provision does not change pre-BAPCPA bankruptcy law that a creditor is entitled to an unsecured deficiency claim in a bankruptcy case if the liquidation of its collateral does not satisfy the debt.

The facts are undisputed. The Debtors purchased a 2001 Ford Expedition for their personal use on November 7, 2003. They paid for the car with a loan from the Creditor and granted the Creditor a security interest in the car to secure the debt. The Debtors filed their chapter 13 case on April 28, 2006. The car is now worth less than the debt.

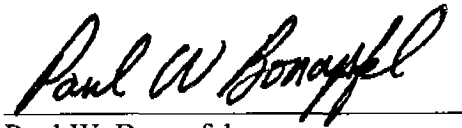
The Court has carefully considered the arguments of the parties in their briefs and the rulings of other courts that have reached conflicting results on this issue. The Court concludes that the better view is that the "hanging paragraph" does not apply to the surrender of collateral under § 1325(a)(5)(C). *Accord, e.g., Dupaco Community Credit Union v. Zehrung (In re Zehrung)*, 351 B.R. 675 (W.D. Wisc. 2006); *In re Particka*, 2006 WL 335018 (Bankr. E.D. Mich. 2006). *Contra, e.g., In re Payne*, 347 B.R. 278 (Bankr. S.D. Ohio 2006); *In re Brown*, 346 B.R. 868 (Bankr. N.D. Fla. 2006); *In re Ezell*, 338 B.R. 330 (Bankr. E.D. Tenn. 2006). Because the Debtors' plan provides for full satisfaction of the Creditor's claim upon surrender of the vehicle that is worth less than the debt, the plan does not provide proper treatment of the Creditor's claim and cannot be confirmed.

It is, therefore, hereby **ORDERED and ADJUDGED** that confirmation of the Debtors' plan be, and it hereby is, **DENIED**. The Debtors shall have 15 days to amend the plan if they choose. If an amendment is filed, the Debtors shall arrange for the scheduling of a hearing on

confirmation and shall serve the amended plan and notice of the confirmation hearing on all parties in interest in this case. If an amendment is not timely filed, the Court upon request of the Chapter 13 Trustee or any other party in interest may dismiss the case without further notice and without a hearing.

The Clerk is directed to mail a copy of this Order to all parties in interest in this case.

IT IS SO ORDERED this 14th day of December, 2006.

A handwritten signature in black ink, reading "Paul W. Bonapfel", written over a horizontal line.

Paul W. Bonapfel
United States Bankruptcy Judge